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5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE EASTERN DISTRICT OF WASHINGTON**

7  
8 **UNITED STATES OF AMERICA,** )  
9 **Plaintiff,** ) **NO. CR 11-00107-019 &**  
10 **vs.** ) **CR 12-00017-001**  
11 **SANDRA IRENE DUFFY** )  
12 **Defendant.** ) **SENTENCING MEMORANDUM**

13  
14 Defendant Sandra Duffy, thorough her counsel of record Jeffry K. Finer,  
15 submits the following in support of her sentencing hearing.

16     **I. Procedural Background**

17  
18 On July 19, 2011, the grand jury indicted Ms. Duffy along with more  
19 than a dozen alleged co-conspirators for a group of controlled substance  
20 offenses occurring in the Eastern District of Washington. Ms. Duffy was  
21 charged only with Conspiracy (Count 1). On November 16, 2011, this  
22 indictment was superseded and Ms. Duffy was included in the Conspiracy  
23 and a single count of Possession with Intent to Distribute 50 Grams or More

1 of Actual Methamphetamine (Counts 1 and 11). CR 11-107-019.  
2

3 On February 7, 2012, the grand jury issued an indictment against Ms.  
4 Duffy for Escape based upon her failure to return from a medical furlough  
5 while in the custody of her attorney. CR 12-017-001.

6 On 2012, Duffy entered guilty pleas to Count 11 of the superseding  
7 indictment in CR 11-107 and to the one count of Escape in CR 12-0017.  
8 This plea was submitted under Fed. Crim. R. Pro. 11(c)(1)(C), with an  
9 agreed sentencing range from 160 to 262 months — a substantial variance  
10 from the Guideline range identified in the PSIR (262 to 327 months).

11 **II. Factual Background**  
12

13 The offense conduct is accurately set forth in the PSIR from ¶ 32 to ¶ 51.  
14 This memorandum notes two items in particular.

15 1. Ms Duffy immediately acknowledged to the arresting officers her  
16 involvement with her supplier, a man named Heath Wisdom. (PSIR ¶  
17 37). The first interview occurred at the arrest scene.  
18

19 2. Ms. Duffy then gave a more detailed recorded interview after  
20 transport to the Wenatchee Police Department.

21 It is important to note that Ms. Duffy did not seek counsel prior to  
22 either interview. Despite her significant criminal history (11 points, not  
23 including numerous un-scored charges and old offenses) and her evident

experience with the criminal justice process, she simply gave up all her information without seeking counsel or compensation (i.e., bargaining). Just as significant, when Ms. Duffy was giving the arresting officers the story of Heath Wisdom, she was unaware that federal authorities had been using Mr. Wisdom for months as a confidential informant in an advanced investigation of a wide-spread drug conspiracy. She was also unaware that the Federal authorities already knew that Mr. Wisdom, a key confidential source in its investigation, was separately dealing drugs even while working for the government. For reasons protected by valid prosecutorial discretion, the government was not yet ready to put an end to Mr. Wisdom's double-cross by the time he recruited Ms. Duffy.<sup>1</sup>

The upshot of Ms. Duffy's disclosures on the day of her arrest was (1) she had no bargaining position, having given up her useful information and inculpated herself before she met with counsel and (2) the federal authorities already knew that Mr. Widsom was staging an elaborate double-cross. In

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<sup>1</sup> The Defendant does not allege that the government was aware of her recruitment, nor that she was entrapped or that the government was in any way responsible for her recruitment. There is no evidence of government misconduct. Mr. Wisdom's double-cross was his own idea and the government's timing in stopping him a matter solely within its discretion.

1 effect, her willingness to cooperate was sincere and included accurate  
2 disclosures but ultimately was of no value to law enforcement.

3 During the pretrial phase of CR 11-107, Ms. Duffy was made aware of  
4 her sentencing exposure. She plainly qualified as a Career Offender and she  
5 plainly had nothing of value to offer in exchange for her cooperation. She  
6 was advised that she faced a life sentence. Although she was aware that her  
7 counsel was attempting to negotiate a plea for her, she was not advised of  
8 the status of the negotiations as, according to her original counsel, the terms  
9 were not sufficiently solid for him to provide her with any specifics.  
10

11 Facing a life sentence, Ms. Duffy concocted an escape plan based upon  
12 an unfeigned but likely non-serious medical condition. The escape was  
13 intended to get her to Wenatchee where her daughter had recently given  
14 birth to her first granddaughter. (PSIR ¶ 56). Although she did elude  
15 immediate capture, her plan was flawed and she spent miserable hours in the  
16 cold without proper clothing or money. She finally contacted her family,  
17 indicating she wanted to turn herself in.  
18

### 20 III. Legal Authority

21 The Ninth Circuit has settled upon a process by which the court should  
22 complete the sentencing procedure in light of *United States v. Booker*'s  
23 remedial regime, under which the Guidelines are no longer mandatory.  
24

1      *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc); *United*  
 2      *States v. Booker*, 543 U.S. 220 (2005). The Court noted that the decisions of  
 3      *Rita*, *Gall*, and *Kimbrough* supersede how the courts of the Ninth Circuit  
 4      have approached the sentencing process in light of *Booker*. *Carty*, 520 F.3d  
 5      at 91; *Rita v. United States*, 551 U.S. 338, 350-52 (2007); *Gall v. United*  
 6      *States*, 552 U.S. 38, 48-50 (2007); *Kimbrough v. United States*, 552 U.S. 85,  
 7      100-102 (2007).

9      The Court further noted that all sentencing proceedings should start by  
 10     determining the applicable Guideline range. *See Carty*, 520 F.3d 984. The  
 11     Guidelines are the “starting point and the initial benchmark.” *Id.* at 991,  
 12     (citing *Kimbrough*, 552 U.S. at 100-02). The Guidelines are to be kept in  
 13     mind throughout the process. *Gall*, 552 U.S. 48-51. The parties should be  
 14     given a chance to argue for a sentence each believes is appropriate. *Carty*,  
 15     520 F.3d at 991. The district court may not presume the Guideline range is  
 16     reasonable. *Id.* The district court should then consider the 18 U.S.C. §  
 17     3553(a) factors to decide if they support the sentence suggested by the  
 18     parties. The statute contains an overarching provision instructing the district  
 19     courts to “impose a sentence sufficient, but not greater than necessary” to  
 20     accomplish the goals of sentencing, including:  
 21  
 22     to reflect the seriousness of the offense ... promote  
 23

1 respect for the law ... provide just punishment for the  
 2 offense ... afford adequate deterrence to criminal  
 3 conduct ... [and] protect the public from further crimes  
 4 of the defendant.

5 *Kimbrough*, 552 U.S. 101 (citing 18 U.S.C. § 3553(a)).  
 6

7 Several factors place Duffy's case outside these Guidelines, and  
 8 warrant a variance from the standard sentencing range. These factors include  
 9 the matters set forth above in the recitation of the offenses as well as the  
 10 Defendant's long term psychological issues.  
 11

**A. Advisory Sentencing Guideline Range.**

The PSIR accurately set forth the Guideline Range, with an Adjusted Offense Level of 31 and Criminal History Score of 11 (Category V). (PSIR ¶ 76; ¶ 214). This range is further increased by Ms. Duffy's qualification for Career Offender status, resulting in a final score of 34 with history Category VI. (PSIR ¶ 77, 80). The putative range, therefore, is 262 to 327 months. (PSIR ¶ 281). As set forth below, and in view of the 11(c)(1)(C) plea agreement's range of 150 to 262, this range is too severe.

**B. After a review of the required factors in addition to the characteristics of Defendant, a 150-month sentence is justified under 18 U.S.C. § 3553(a).**

The Court must consider the following factors under 18 U.S.C. § 3553(a)

when imposing a sentence:

- 1        1) the nature and circumstances of the offense and the history and
- 2              characteristics of the defendant;
- 3        2) the need for the sentence imposed –
  - 4              (A) to reflect the seriousness of the offense, to promote respect for
  - 5              the law, and to provide just punishment for the offense;
  - 6              (B) to afford adequate deterrence to criminal conduct;
  - 7              (C) to protect the public from further crimes of the defendant; and
  - 8              (D) to provide the defendant with needed educational or vocational
  - 9              training, medical care, or other correctional treatment in the
  - 10             most effective manner;
  - 11        3) the kinds of sentences available
  - 12        4) the advisory guideline range;
  - 13        5) any pertinent policy statements issued by the Sentencing Commission;
  - 14        6) the need to avoid unwarranted disparities;
  - 15        7) the need to provide restitution.

Each factor is next addressed in order.

20  
21        **(1) The nature and circumstances of the offense and the history  
22              and characteristics of Ms. Duffy show cause for a sentence of  
23              150 months.**

24        There are no indications that Duffy was a leader or an organizer of the

1 conduct that she is charged with. Nor is she involved in any gang activity.

2 She became involved with Heath Wisdom on a social level when he offered  
3 to sell her a vehicle. She purchased it and, when payments became difficult,  
4 Mr. Wisdom offered to let her pay it off by selling his drugs.

5 Ms. Duffy does not claim she was coerced, nor entrapped. She was  
6 familiar with drug distribution schemes and while she did not intend to  
7 return to this lifestyle after her release in 2010, her one-year supervision in  
8 Wenatchee simply made it too easy to slip through the net. She agreed to sell  
9 for Mr. Wisdom. It is nevertheless worth noting that had her supervision  
10 been in Spokane — or longer than a year — she would have been a good  
11 candidate for the STEP program and with the proper medical care and  
12 supervision may have succeeded. Absent sustained support Ms. Duffy was  
13 easy prey. Given her profound chemical dependency and addiction profile,  
14 and her being readily manipulated, Mr. Wisdom quickly brought her into his  
15 scheme.

16 She has expressed a strong desire to become involved in the United  
17 States Bureau of Prisons“ Residential Drug Abuse Treatment Program. The  
18 PSIR recommended her entry into the program. She is also aware that her  
19 next supervised release will be far more intensive, and she will be far more  
20 likely able to abide by her conditions.

1           **(2) A 150-month sentence will result in Ms. Duffy's**  
2           **release at age 58 or 59; it meet the requirements**  
3           **found in 18 U.S.C. § 3553(a).**

4           *The seriousness of the crime will be reflected by a 150-month sentence.*

5           Duffy not only admits to and regrets committing the charges against her,  
6           but she also fully comprehends the severity of her mistakes.

7           *The need for the sentence imposed to afford adequate deterrence, to protect*  
8           *the public from further crimes, and to provide Ms. Duffy with the needed*  
9           *education, vocational training, medical care, or other correctional treatment*  
10          *in the most effective manner.*

11          A 150-month sentence would adequately protect the public from any  
12          further crimes. Ms. Duffy 48 years old and has already served 17 months  
13          pretrial. She has a history of mental health issues. She took responsibility for  
14          her own actions when initially arrested, but made an irrational decision when  
15          she believed she faced a life sentence. All these decisions — her drug use,  
16          criminal activity and the escape — are a reflection of her persistent and  
17          essentially untreated bi-polar disorder.

18          After a 150-month sentence, Duffy will be 49 years-old upon release  
19          (depending on her receiving the 500 hour program and assuming good time;  
20          a bare calculation results in a release at age 51).

21          Considering the fact that she never graduated from high school, the 150-

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1 month sentence will give Ms. Duffy an opportunity to further her training  
 2 and education beyond her current GED. If Ms. Duffy completes her prison  
 3 sentence at age 50, she will still be young enough to participate in the life of  
 4 her granddaughter and daughter, as well as obtain employment. If she  
 5 obtains additional education or vocational training while incarcerated, she  
 6 will be well-qualified for employment and have an opportunity to redress her  
 7 debt to the community and to her family.

9           **(3) The Court must consider the kinds of sentences**  
 10           **available for the specific case at hand and a 150-**  
              **month sentence is a viable option.**

11           “[T]he sentencing court does not enjoy the benefit of a legal  
 12           presumption that the Guidelines sentence should apply.” *Rita v. United*  
 13           *States*, 551 U.S. 338, 352 (2007). Thus, this Court has an obligation to make  
 14           an independent assessment of what sentence meets the requirements of 18  
 15           U.S.C. § 3552(a) for each specific case, separate from any recommendation  
 16           made by the U.S. Sentencing Commission. *Id.* at 2463-65. Therefore, this  
 17           Court retains the discretion to impose any sentence it deems appropriate. *Id.*

20           **(4) The advisory Sentencing Guidelines must be**  
 21           **considered by the Court.**

22           Although the sentencing court may not give the sentencing Guidelines a  
 23           legal presumption, the Guidelines still need to be considered by the Court.  
 24

Ms. Duffy falls under the sentencing guideline range of 262 to 327 months.

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1           **(5) The Policy Statements issued by the Sentencing Commission  
2           permit a Downward Departure from the Recommended  
3           Sentence.**

4           In this case, the Guidelines do not provide a substantial basis for  
5           departure except insofar as her personal background and the way in which  
6           she became part of the conspiracy is not within the “heartland” of such  
7           cases.

8           **(6) A 150-month sentence would not create an  
9           unwarranted disparity.**

10          Ms. Duffy acknowledges the seriousness of her conduct and takes full  
11          responsibility. Although she did not provide substantial assistance, she was  
12          prepared to do so and in fact gave up truthful information about the  
13          government’s confidential informant. Others in the conspiracy, admittedly  
14          not with Career Offender status, have been given far lower sentences based  
15          upon their prompt recognition of wrongdoing and willingness to cooperate.  
16          When all the factors from 18 U.S.C § 3553(a) are considered, a 120-month  
17          sentence would not create an *unwarranted* disparity.

18          **(7) The Need to Provide Restitution is not a relevant  
19           factor in this case.**

20          As stated in the PSR, restitution is not an issue in this case.

21          **(C) Considering all of the factors, a 120-month sentence is proper.**

22          When the court determines a sentence, it must consider “the structure and

theory of both relevant individual guidelines and the guidelines taken as a whole.” *United States v. Lipman*, 133 F.3d 726, 730 (9th Cir. 1998). Each guideline carves out a “heartland,” *Lipman*, 133 F.3d at 730, and “[w]hat falls within the “heartland” of a guideline is . . . within the discretion and special expertise of the district court.” *Id.* at 730. “In *Booker*, the Supreme Court stated, “[w]e have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range.” *United States v. Booker*, 543 U.S. 220, 223 (2005). Although the Guideline ranges must be considered, the sentence may be tailored to consider other relevant concerns. *Id.* at 245. Courts have stated that mitigating factors include a cooperation with the government. *See, e.g., United States v. Dickey*, 924 F.2d 836 (9th Cir. 1991); *United States v. Denardi*, 892 F.2d 269, 270 (3rd Cir. 1989).

The Defendant intends to provide the Court with past and recent medical information in further support of her establishing the role her bipolar disorder has played in her past criminal conduct.

Furthermore, Ms. Duffy’s relationship with her family and the level of support given by her immediate family during this difficult time should also be considered. Once Ms. Duffy completes her sentence, she believes she will not return to her family’s hometown, Wenatchee, but expects to reside in

1 Eastern Washington.  
2

3 **IV. Conclusion**  
4

5 In conclusion, Ms. Duffy respectfully requests the court sentence her to a  
6 total of 150 months confinement.  
7

8 DATED this 30th day of October, 2012.  
9

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11

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14 Attorney for Plaintiff  
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